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Protection of the Atmosphere

Texts and titles of draft guidelines and preamble adopted by the Drafting Committee on first reading

Preamble

Acknowledging that the atmosphere is essential for sustaining life on Earth, human health and welfare, and aquatic and terrestrial ecosystems,

Bearing in mind that the transport and dispersion of polluting and degrading substances occur within the atmosphere,

Noting the close interaction between the atmosphere and the oceans,

Recognizing therefore that the protection of the atmosphere from atmospheric pollution and atmospheric degradation is a pressing concern of the international community as a whole,

Aware of the special situation and needs of developing countries,

Aware also, in particular, of the special situation of low-lying coastal areas and small island developing States due to sea-level rise,

Noting that the interests of future generations of humankind in the long-term conservation of the quality of the atmosphere should be fully taken into account,

Recalling that the present draft guidelines are not to interfere with relevant political negotiations, including those on climate change, ozone depletion, and long-range transboundary air pollution, and that they also neither seek to "fill" gaps in treaty regimes nor impose on current treaty regimes legal rules or legal principles not already contained therein,

Guideline 1
Use of terms

For the purposes of the present draft guidelines,

(a) "Atmosphere" means the envelope of gases surrounding the Earth;

(b) "Atmospheric pollution" means the introduction or release by humans, directly or indirectly, into the atmosphere of substances contributing to deleterious effects extending beyond the State of origin of such a nature as to endanger human life and health and the Earth's natural environment;

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(c) "Atmospheric degradation" means the alteration by humans, directly or indirectly, of atmospheric conditions having significant deleterious effects of such a nature as to endanger human life and health and the Earth's natural environment.

Guideline 2
Scope of the guidelines

1. The present draft guidelines concern the protection of the atmosphere from atmospheric pollution and atmospheric degradation.

2. The present draft guidelines do not deal with, but are without prejudice to, questions concerning the polluter-pays principle, the precautionary principle, common but differentiated responsibilities, the liability of States and their nationals, and the transfer of funds and technology to developing countries, including intellectual property rights.

3. The present draft guidelines do not deal with specific substances, such as black carbon, tropospheric ozone and other dual-impact substances, which are the subject of negotiations among States.

4. Nothing in the present draft guidelines affects the status of airspace under international law nor questions related to outer space, including its delimitation.

Guideline 3
Obligation to protect the atmosphere

States have the obligation to protect the atmosphere by exercising due diligence in taking appropriate measures, in accordance with applicable rules of international law, to prevent, reduce or control atmospheric pollution and atmospheric degradation.

Guideline 4
Environmental impact assessment

States have the obligation to ensure that an environmental impact assessment is undertaken of proposed activities under their jurisdiction or control which are likely to cause significant adverse impact on the atmosphere in terms of atmospheric pollution or atmospheric degradation.

Guideline 5
Sustainable utilization of the atmosphere

1. Given that the atmosphere is a natural resource with a limited assimilation capacity, its utilization should be undertaken in a sustainable manner.

2. Sustainable utilization of the atmosphere includes the need to reconcile economic development with protection of the atmosphere.

Guideline 6
Equitable and reasonable utilization of the atmosphere

The atmosphere should be utilized in an equitable and reasonable manner, taking into account the interests of present and future generations.

Guideline 7
Intentional large-scale modification of the atmosphere

Activities aimed at intentional large-scale modification of the atmosphere should be conducted with prudence and caution, subject to any applicable rules of international law.

Guideline 8 [5][1]
International cooperation

1. States have the obligation to cooperate, as appropriate, with each other and with relevant international organizations for the protection of the atmosphere from atmospheric pollution and atmospheric degradation.

[1] The draft guideline was renumbered during the sixty-eighth session of the Commission. The original number appears in square brackets.

2. States should cooperate in further enhancing scientific knowledge relating to the causes and impacts of atmospheric pollution and atmospheric degradation. Cooperation could include exchange of information and joint monitoring.

Guideline 9
Interrelationship among relevant rules

1. The rules of international law relating to the protection of the atmosphere and other relevant rules of international law, including, *inter alia*, the rules of international trade and investment law, of the law of the sea and of international human rights law, should, to the extent possible, be identified, interpreted and applied in order to give rise to a single set of compatible obligations, in line with the principles of harmonization and systemic integration, and with a view to avoiding conflicts. This should be done in accordance with the relevant rules set forth in the Vienna Convention on the Law of Treaties of 1969, including articles 30 and 31, paragraph 3 (c), and the principles and rules of customary international law.

2. States should, to the extent possible, when developing new rules of international law relating to the protection of the atmosphere and other relevant rules of international law, endeavour to do so in a harmonious manner.

3. When applying paragraphs 1 and 2, special consideration should be given to persons and groups particularly vulnerable to atmospheric pollution and atmospheric degradation. Such groups may include, *inter alia*, indigenous peoples, people of the least developed countries and people of low-lying coastal areas and small island developing States affected by sea-level rise.

Guideline 10
Implementation

1. National implementation of obligations under international law relating to the protection of the atmosphere from atmospheric pollution and atmospheric degradation, including those referred to in the present draft guidelines, may take the form of legislative, administrative, judicial and other actions.

2. States should endeavour to give effect to the recommendations contained in the present draft guidelines.

Guideline 11
Compliance

1. States are required to abide with their obligations under international law relating to the protection of the atmosphere from atmospheric pollution and atmospheric degradation in good faith, including through compliance with the rules and procedures in the relevant agreements to which they are parties.

2. To achieve compliance, facilitative or enforcement procedures may be used, as appropriate, in accordance with the relevant agreements:

(a) facilitative procedures may include providing assistance to States, in cases of non-compliance, in a transparent, non-adversarial and non-punitive manner to ensure that the States concerned comply with their obligations under international law, taking into account their capabilities and special conditions;

(b) enforcement procedures may include issuing a caution of non-compliance, termination of rights and privileges under the relevant agreements, and other forms of enforcement measures.

Guideline 12
Dispute settlement

1. Disputes between States relating to the protection of the atmosphere from atmospheric pollution and atmospheric degradation are to be settled by peaceful means.

2. Given that such disputes may be of a fact-intensive and science-dependent character, due consideration should be given to the use of technical and scientific experts.